

**MINUTES**

**PRESENT:**

- J. Burke
- R. Dodds
- D. Haywood
- J. Mathieu
- S. McNicol
- E. Niemann
- L. Sensus
- J. Strasser
- M. Synchronick, Alt #1
- D. Posey, Alt #2
- A. Clerico, Planner
- T. Decker, Engineer
- D. Pierce, Attorney

**ABSENT:** T. Kratzer

**CALL TO ORDER**

The meeting was called to order at 7:31 PM by R. Dodds.

**NOTIFICATION**

In order to ensure full public participation at this meeting, all members of this Board, and members of the public are requested to speak only when recognized by the Chair so that there is no simultaneous discussion or over-talk, and further, all persons are requested to utilize the microphones which are provided for your use by the Township. Your cooperation is appreciated.

Notification of the time, date and place of this meeting has been published in the Hunterdon County Democrat and Courier News, and has been posted in the Kingwood Township Municipal Building at least 48 hours prior to this meeting and has been filed with the Municipal Clerk.

**NEW AND PENDING MATTERS**

**Perrotti – Block 23, Lots 11 & 11.01**

P. Henry, attorney for the applicant, was present this evening to request an adjournment of the matter to the August 11, 2009 meeting.

R. Dodds announced the Perrotti application, Block 23, Lots 11 & 11.01, will be carried to the August 11, 2009 Planning Board meeting beginning at 7:30 PM at the Kingwood Township Municipal Building without further notice.

**Stepanovsky – Block 7, Lot 3 & 3.07 – Oak Summit Road – Boundary Line Adjustment – Completeness Determination –**

M. DeSapio, of DeSapio Law Offices in Frenchtown, was present for the applicants. The applicants are proposing to divide 48 acres from Lot 3 and add it to Lot 3.07. He is requesting the application be deemed complete.

The following memo was issued by T. Decker:

Our office is in receipt of documents in support of the above mentioned application including the plan titled "Merger – Subdivision for The Stepanovsky Farm, Block 7 Lots 3 & 3.07" as prepared by Stanley M. Norkevich, Land Surveyor dated May 11, 2009. This application is for a lot line adjustment and merger of lands between Lots 3 and 3.07 in Block 7. Applicant proposes to merge 48.13 acres from Lot 3 to Lot 3.04 resulting in total lot areas of 61.874 acres and 52.817 acres respectively.

By way of the lot line adjustment there is no exacerbation of any pre-existing nonconforming bulk requirements. The configuration as proposed is in full compliance with the zoning requirements for the AR-2 Zone.

It was moved by J. Mathieu, seconded by D. Haywood and carried to deem the application for Stepanovsky, Block 7, Lots 3 & 3.07, complete. All members present voted **AYE** on **ROLL CALL VOTE**.

Route 12 Business Park – Block 15, Lot 8.02 – Route 12 – Conditional Use Application – Completeness Determination

The matter was called and no response was heard.

**Cacciabauda – Block 37, Lot 3.05 – 3.07 – Federal Twist Road – Minor Subdivision**

The following report was provided by T. Decker:

### **Project Description**

Project site is located off of Federal Twist Road and was subject to a previously approved subdivision creating Lots 3.05, 3.06, 3.07, 3.08 and 3.09 in Block 37. Total tract area contains approximately 39.28 acres of wooded land within the AR-2 Agriculture-Residential Zone. Freshwater wetlands have been delineated and verified by NJDEP in the northern portion of the site and within the proposed access easement through adjacent Lot 9.01.

The existing five (5) lots are proposed to be re-subdivided for a total of three (3) lots. Previously proposed roadway and cul-de-sac are no longer proposed. Access is proposed through an access easement through adjacent Lot 9 with a 10 foot wide gravel driveway. Construction of the proposed three lots impacts the environmentally sensitive areas significantly less than the originally approved five lot subdivision.

### **Zoning: AR-2 Agricultural and SingleFamily Residential District**

1. Property is located within the AR-2 Agriculture & Single Family Residential District
2. Our office defers to the Board Planner with regards to a full zoning review.
3. A variance is required from the 250 foot Minimum Lot Frontage requirements of Kingwood Ordinance §132-30.F(1). Proposed Lots 3.06 and 3.07 have 25 foot frontages through the northern 50 foot wide flag staff. Lot 3.05 does not have frontage on a public road.

**Plan Review*****Cover Sheet – Sheet 1 of 7***

1. No Comments.

***Existing Conditions Plan – Sheet 2 of 7***

2. Wetlands areas should be hatched for clarity.
3. Stone rows should be labeled.
4. Label and dimension buffers associated with freshwater wetlands and Category One streams.

***Minor Subdivision Plan – Sheet 3 of 7***

5. Comments as previously noted for the Existing Conditions Plan.
6. State Plane coordinates should be provided for three boundary corners.
7. Metes and bounds are required for adjacent Lot 9.01 and associated access easement.
8. Conservation easements and easement markers should be shown per §115-6.5 of the Kingwood Township Ordinance.
9. Lot area summary should be provided.
10. Proposed common driveway is approximately 1,550 LF. A turnaround should be provided at its terminus to facilitate emergency vehicles and trash collection.
11. Common driveway should be extended through the proposed access easement to Federal Twist Road.
12. A copy of the NJDEP Permit# 1016-04-0017.1 FWW 060001 and approved plan as referenced for Lots 9 and 9.01 Minor Road Crossing should be provided.
13. Applicant should advise as to the status of wetlands and transition crossings and improvements within these areas. If not improved or proposed as part of the current application, references should be removed.
14. Common driveway should be centered within the access easement.
15. Well location on Lot 3.08 is less than 100 feet from the proposed septic disposal field.
16. Following notes should be added to the plans:
  - a. All trees and limbs shall be cleared to a minimum height of 14 feet from that area which extends three feet on each side of the improved surface of the driveway.
  - b. No lot shall be conveyed to a new owner without the applicant/owner of the unsubdivided tract first completing construction of the common driveway.
  - c. Per the letter dated May 13, 2009 from the Delaware & Raritan Canal Commission, any future construction on the three created lots that require any municipal approval, including but not limited to construction permits, will require review and approval by the Delaware and Raritan Canal Commission.
  - d. Right to Farm note per Township ordinance.
17. The 10 foot wide gravel common driveway is consistent with the requirements for a Class II Minor Subdivision. As there are four (4) Lots utilizing the common driveway, the subdivision is more in

line with the former Class III Minor Subdivision requirements. As such a paved driveway would be required at a width of 16 feet. [§112-7G(2) ].

***Grading Plan – Sheet 4 of 7***

18. Items as previously mentioned in Comments 5, 10, 11, 14, 15 and 17 above.
19. Septic disposal fields with anticipated grading should be added.
20. Limits of proposed tree clearing should be shown.
21. Proposed grading of homes does not adequately represent the anticipated grading associated with a single family home construction to achieve positive drainage and a usable yard.
22. Adequate sight distance along Federal Twist Road should be provided.

***Detail Sheet – Sheet 5 of 7***

23. Sand should be eliminated from the drywell detail and stone size specified. Detail should also note the maximum impervious surface area to be treated by the drywell.
24. Gravel driveway detail should show adjacent 3 foot wide shoulders. Construction material and width should be addressed per previous Comment #17.

***Soil Erosion & Sediment Control Plan – Sheet 6 of 7***

25. Existing site is entirely wooded. Limit of disturbance should account for a reasonable amount of tree clearing associated with a single family home construction, usable lot area and septic system construction.
26. Construction entrance should be located at Federal Twist Road.
27. Tree protection fence should be provided at limit of disturbance.

***Soil Erosion & sediment Control Details – Sheet 7 of 7***

28. Tree protection fence detail should be provided.

**Stormwater Management Review**

Applicant's engineer states in the Stormwater Management Report that since the project includes less than one acre of disturbance and ¼ acre of new impervious, runoff quantity and quality requirements do not apply. Calculations are provided for groundwater recharge by determining pre & post development runoff rates and volumes. Recharge calculations indicate that there is a recharge shortage of 2,445 cf for the two year storm event. Individual drywells are proposed to compensate for the deficiency, however are not sized.

Based on our review of the report and its findings, we offer the following:

1. A disturbance area of 36,988.71 SF is shown on the Soil Erosion & Sediment Control Plan. As previously noted, the limit of disturbance should be expanded to include the septic disposal fields and reasonable usable lot areas. The disturbance will likely exceed the one (1) acre threshold triggering treatment for water quality and quantity. As the site is completely wooded, changes in ground cover have a greater impact than on farmed properties.
2. Annual groundwater recharge calculations should be provided utilizing the spreadsheet as provided by the NJDEP.

3. While NJDEP regulations do not include new stone areas as impervious cover, the common driveway should be considered as impervious for the purpose of stormwater management to account for future pavement of the driveway.

### **Administrative**

1. Subject to unconditional approvals from the following agencies:
  - a. Hunterdon County Planning Board
  - b. Delaware & Raritan Canal Commission
  - c. Hunterdon County Soil Conservation
  - d. Any other agency having regulatory jurisdiction.
2. Should subdivision be filed by deed, copies of the final approved Minor Subdivision Plan should be filed as an exhibit.

The following report was provided by D. Banisch, Planner:

1. The applicant is proposing to re-subdivide a 5-lot minor subdivision consisting of approximately 39.14 acres of land to three lots (proposed lots 3.05, 3.06, and 3.07). Additionally, the plan shows two lots (existing lots 9 and 9.01) which are out-parcels that adjoin the subject tract. It appears that all five (5) lots (proposed Lots 3.05, .06 and .06 and Lots 9 & 9.01) will share a common private driveway that is to be constructed to provide access to Federal Twist Road.
2. This re-subdivision application was the subject of a concept plan discussion with the Board in August 2008 at which time it was agreed that (1) eliminating the approved access road, which traverses the unnamed tributary to the Lockatong Creek in the northerly portion of the tract, and (2) the reduction in lots from 5-lots to 3-lots, is preferable to any subdivision involving a crossing of the tributary.
3. In addition to the proposed reconfigured subdivision avoiding construction of an access road adjacent to the C-1 stream, the proposed home sites will also be removed from the Stream Corridor and out of steep slope areas of the tract. Sheet 4 of 7 identifies proposed home sites and the topography of each site to be only mildly sloping (i.e. less than 4%). The proposed dwelling units appear to be situated on relatively flat portions of the tract where minimal grading is proposed.
4. A previously proposed cul-de-sac road to serve the approved 5-lot minor subdivision, and which crossed an unnamed tributary to the Lockatong Creek, will be eliminated by the proposed re-subdivision of this tract.
5. Plans show an unnamed tributary to the Lockatong Creek, a NJDEP designated Category 1 waterway traversing the rearward portion of proposed Lots 3.06 and 3.07. The associated 300' C-1 waters buffer is shown as extending across the northerly and rearward portions of proposed Lots 3.05, 3.06, and 3.07. Plans should show the location of conservation easement markers to be placed along the 300' C-1 buffer line in accordance with Township Ordinance 115-6.5.
6. Plans identify wetlands delineated on Block 37 Lot 3 Remaining, however no wetlands transition area is shown. Plans should identify the wetlands transition area associated with this wetland complex, as delineated on Sheet 3 of 7, Minor Subdivision Plan.

7. The property is located within the AR-2 Agriculture and Single-Family Residential District. The proposed re-subdivision of the tract conforms to the AR-2 Zone dimensional and zoning requirements as noted in the zoning table from Sheet 3 of the plans below.

<b>Zone AR-2</b>	<b>Permitted or Required</b>	<b>Proposed Lot 3.05</b>	<b>Proposed Lot 3.06</b>	<b>Proposed Lot 3.07</b>
<b>Min. Lot Area</b>	<b>7.0 ac</b>	14.48 ac	11.93 ac	12.87 ac
<b>Min. Frontage</b>	<b>250 ft</b>	0 ft*	25.53 ft*	25.53 ft*
<b>Min. Lot Width</b>	<b>250 ft</b>	803 ft	428 ft	608 ft
<b>Min. Lot Depth</b>	<b>300 ft</b>	649 ft	922 ft	670 ft
<b>Min. Front Yard</b>	<b>75 ft</b>	250 ft	250 ft	250 ft
<b>Min. Side Yard</b>	<b>40 ft</b>	279 ft	173 ft	254 ft
<b>Min. Rear Yard</b>	<b>60 ft</b>	380 ft	563 ft	370 ft
<b>Max. Bldg. Height</b>	<b>35 ft</b>	< 35 ft	< 35 ft	< 35 ft
<b>Max. Bldg. Coverage</b>	<b>8%</b>	0.47 %	0.58 %	0.54 %
<b>Max Aggregate Impervious Lot Coverage</b>	<b>13%</b>	3.11 %	1.06 %	0.98 %
<b>Min. Lot Circle Diameter</b>	<b>200 ft</b>	550 ft	368 ft	495 ft
<b>Min. Buildable Area</b>	<b>1.0 ac</b>	6.12 ac	5.33 ac	7.25 ac

\*Variances required.

8. Access to the reconfigured subdivision will be achieved for each of the three proposed lots via a driveway that is to be improved within a proposed easement on existing (Block 37) Lot 9 and within a ‘flag stem’ portion of proposed Lot 3.05. The flag stem on proposed Lot 3.05 extends across and adjoins the southerly property lines of proposed Lots 3.06 and 3.07 to the terminus of the proposed easement on existing Lot 9 within which a proposed 10’ wide driveway is to be constructed to serve each lot.
9. Proposed Lot 3.05, will not contain any frontage on a public street, and therefore will require an appeal from N.J.S.A. 40:55D-35, Building lot to abut street, which states that “No permit for the erection of any building or structure shall be issued unless the lot abuts a street giving access to such proposed building or structure. . .”. While Lots 3.06 and 3.07 both derive access from the proposed easement through existing Lot 9, upon which a proposed driveway is to be constructed, the shared flag stem provides each of these lots with 25’ of frontage on Federal Twist Road.
10. Variance from Section D-35, N.J.S.A. 40:55D-36, Appeals., states that “Where the enforcement of [Section 35] would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the building or structure to be related to a street, the [planning board] may upon application or appeal, vary the application of [Section 35] and direct the issuance of a permit subject to conditions that will provide adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety.”
11. We recommend that the Board require the following plan modifications as a condition of varying the requirement granting for the Section D-36 Appeal:

- Driveway should be improved to a width of 16' between Federal Twist Road and its terminus on Proposed Lot 3.05;
- A common driveway access and maintenance agreement should be required, which includes maintenance of a full 16' of cleared vegetation and a clear height sufficient for volunteer firefighting apparatus;
- Maintain the two pull-offs where shown on the plan (one half the width provided may be acceptable);
- Construct a turnaround for emergency vehicles at the terminus of the proposed driveway.

12. Proposed lots 3.06 and 3.07 fail to meet the minimum lot frontage requirement of 250', and therefore require variances for the proposed frontage conditions (see discussion on variance proofs below).
13. An existing 10' wide dirt road extends along the northerly portion of the site from Federal Twist Road, adjacent to the unnamed C-1 tributary to the Lockatong. We recommend that the Board discuss the idea of abandoning this access, which would allow vegetation to regenerate and enhance stream corridor protection. Additionally, the Board should consider whether a gate should be installed across the dirt road (i.e. a distance of 20' to 40' from Federal Twist Road) to deter use of the dirt road.
14. With a bulk variance the applicant must demonstrate that there is an extraordinary or exceptional situation relating to a specific piece of property which, if the zoning regulations were strictly applied, would result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the applicant; or, the applicant must demonstrate that the purposes of the Municipal Land Use Law would be advanced by a deviation from the ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

In addition, the applicant must demonstrate that the negative criteria are satisfied, which state that no variance can be granted unless the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

B. Szaferman, attorney for the applicant, was present this evening. B. Szaferman provided proof of publication to D. Pierce for his review.

D. Pierce stated the applicant has satisfied the notice requirements and the Board may open the hearing.

B. Szaferman stated the application is to consolidate an existing five lot subdivision into three lots. The applicant has appeared before the Board a number of times to discuss the application on a conceptual basis. The Board was concerned about the access, cul-de-sac and encroachment in the wetlands areas. The applicant purchased Lot 9.01 to create a new form of access to avoid the issue of the stream encroachment and wetlands. The current application reflects the input from the Board and their professionals. He agrees with all the comments from the professionals except one. The DEP has permitted a 10' wide driveway on Lot 9.01. The professionals have discussed, in their comments, a 16' wide driveway. The applicant is prepared to construct a 16' wide driveway once they approach Lots 3.05 – 3.07. They are requesting the access driveway on Lot 9.01 be limited to a 10' width so they do not have to return to the DEP. It is the one area they are not prepared to accept the recommendation from the professionals.

B. Sutherland, engineer and planner, for the applicant, was sworn in by D. Pierce. B. Sutherland provided his qualifications to the Board.

B. Sutherland reviewed what is currently present on the site and what is proposed and the required variances. The application encompasses Block 37, Lots 3.05 – 3.07 and Lots 9 and 9.01. The existing area is approximately a 39 acre parcel that was subdivided in 2000 into five lots with access to Federal Twist Road by way of a cul-de-sac. The applicant proposes to reduce the lots from five to three, Lots 3.05, 3.06 and 3.07. The lots are 13 acre lots and the access to the parcel is from Federal Twist Road. Lot 9.01 was subdivided as a flag lot to wrap around existing Lot 9. The DEP permitted driveway on Lot 9.01 is 10' wide. The application is for three single family houses. The 10' wide driveway will be up to Lots 3.05-3.07. It will eliminate the stream encroachment and wetlands crossing in the back. They are proposing a 12' wide stone driveway. T. Decker requested 16' wide paved driveway. The applicant would propose to give a 16' wide stone driveway with 3' shoulder on each side up to the property line. There will be a turnout provided on the property, 10'x25', in case a fire truck or apparatus has to pull off the roadway. In light of T. Decker's comments and their inability to make a 16' wide driveway, they propose a 2<sup>nd</sup> turnout at the property line. There should be an average of six trips daily. While it would have been preferable to run the 16' driveway out to the road, the applicant does not have approval for a 16' width on Lot 9.01. The application is a Class II subdivision, which requires a 10' wide driveway. The applicant is willing to go the 16' width. The application is a much lower impact development than approved in 2000. They have complied with the zoning charts. The minimum requirement is 7 acres. The lot dimensions are 14.4, 11.93 and 12 acres. The application conforms to the lot widths and front yard requirements. There is 50.6' of frontage on Federal Twist Road for two of the lots to share. They were unable to get the frontage for the lot in the back. The only issue the applicant has is with the request of the 16' driveway being paved its entire length. Due to their DEP permit, they are unable to put in a 16' driveway on Lot 9.01. Once the driveway is out of the wetland buffer, they can extend the driveway. They have set the driveway parallel to the easement. The actual stem is 50'. They are proposing a 16' wide driveway with 3' of grass on the shoulders.

T. Decker stated the driveway ordinance, which is different and separate from the zoning and subdivision ordinances, discusses the requirements for Common Class III, Class II driveways and so forth. Under the Class II driveway requirements, a 10' wide gravel driveway is permitted with a 3' shoulder. A Class III requires a 16' paved driveway. He stated the Class III 16' paved driveway does not require a 3' shoulder. Both of the requirements give you the same width but one gives a wider paved surface. He does not believe the application falls under the Class II part of the driveway ordinance. The application is more in line with the old Class III subdivision, which provided for a common driveway providing for access for more than two lots. He is requesting a 16' wide paved driveway because more than two lots are accessing the common driveway.

In response to a question by a Board member, D. Pierce responded the rear lot is subdividable as long as it has access and the Board finds there are appropriate reasons to grant the variance to allow the lot to exist without road frontage and that the access is adequate for service by emergency vehicles.

B. Sutherland stated the rear lot is a flag lot. The two lots that have frontage get their access from the rear lot. He stated the applicant will comply with T. Decker's other comments concerning stormwater and grading. The applicant would like to defer any impervious water quality and quantity management to the building application. In regard to Lot 9.01, the applicant would like to stay within the existing approved subdivision.

B. Szaferman stated the applicant is concerned with making any changes to Lot 9.01 which might trigger revisions to the DEP permit. The applicant does not see legal significance between fee ownership or an easement. They are requesting the access stay as an easement and have the Board consider the application on that basis. The maintenance of the common driveway will be a typical shared driveway on a percentage basis and Lot 9.01 will be included in the maintenance.

B. Sutherland stated he has had a planner's license since 1991 and is qualified as a professional planner. He stated the applicant is requesting a variance from the required 250' frontage in the AR-2 zone, which is referred to as bulk variance. The request qualifies as a C-1 hardship due to the unique shape of the property. It is a 39 acre parcel with 50' of frontage on a municipal street. The previous subdivision utilized the 50' roadway and had some wetlands crossing a Category One stream. The hardship is based on the unique shape of the property. The benefit of this subdivision is a much less impact due to the sizes of the proposed lots being 11.93 to 14.2 acres. The maximum buildable area is 4.57 and 4.54 percent. There is a minimum disturbance of wooded and back areas. Environmentally sensitive areas will not be impacted. There is no substantial detriment or impairment to the zoning ordinance. The property allows for 12-14 acre lots where 7 acres are required. There is a .5 to .8 percent build-out area. The benefits far outweigh the detriments of the application for the granting of the variances. The applicant will provide a 16' wide driveway with an additional pull out area, which he indicated on the overhead.

In response to a question by a Board member, D. Pierce responded the Board would not be setting precedence by allowing non-used frontage on a roadway and allowing a three lot subdivision perfected by an easement. There are specific facts to this application. There is already an existing approved five lot subdivision with significant impact to environmentally sensitive areas. The reason, if the Board were inclined, to grant the variance is it benefits the public to preserve the environmentally sensitive areas and the benefits outweigh any detriment to the zoning ordinance. He is not concerned with a precedence standpoint. The approval for Lot 3.05 can be written to approve a building permit for any principal or accessory structure permitted under the ordinance, which will be constructed now or in the future.

B. Sutherland stated there will be a turn around provided at the end of the cul-de-sac for vehicles. The approval for the driveway from the DEP on Lot 9.01 is for a gravel driveway not paved. He read from the letter from the D&R Canal Commission.

T. Decker stated the provision for the turn around will have to be included in the access easement. He expressed his concern over the construction of the gravel driveway. He stated he does not have any issue with B. Sutherland with regard to stormwater management. The common drive's stormwater management will go with the drive and will be constructed prior to any of the houses being sold. Each lot would be subject to its own stormwater management plan, similar to a septic situation. The typical design allows for an impervious coverage of "x" amount which will require "x" amount of storage.

A. Clerico stated their comments recognize the benefits of the reconfiguring of the lots to avoid the environmentally sensitive areas. They would like to see the conservation easement markers noted on the plan. The wetlands' lines are indicated but not the transition areas. She suggested the access road from the north be gated. The applicant was in agreement.

R. Dodds called for comments from the public.

D. Briant, owner of Lot 10.01, commented on the impact the roadway will have on the value of his property. He had concerns about safety issues and dust issues. He suggested a possible barrier. He requested the Board consider requiring the applicant providing him access to his lot off the common driveway to alleviate his need to cross wetlands. B. Sutherland responded the edge of the driveway is 30' off the property line, there is a stone wall that runs the edge of the property and it is very heavily wooded.

B. Szaferman stated there are only two choices of ingress and egress and the proposed access is a far superior choice.

In response to questions from Board members regarding their concern on the size of the roadway, B. Sutherland responded the roadway was designed for a “typical fed-ex vehicle, four wheels on the back” to do a “k” turn. T. Decker provided turning guides.

After some brief discussion on the gravel drive, the Board determined to require a soils engineer to verify the installation of the drive. B. Sutherland stated it will be an 8” gravel driveway under laid with geotextile. A provision will be made at the end of the cul-de-sac for an expanded area to provide turn-around capability for a fire vehicle. B. Sutherland stated, in response to the dust created by the driveway, that soil does not come up from the bottom but is the soil on people’s tires. There might be some dust in a very dry spell.

In response to an inquiry regarding the DEP approval for the gravel driveway on Lot 9.01 allowing access to three additional lots, B. Szaferman responded the approval was obtained by the prior owner and there were no limitations on the permit. B. Sutherland stated the approval was on the square footage of wetlands disturbance. B. Sutherland will research the permit to obtain the specifics of the approval. T. Decker stated there is no stipulation when you apply for approval that it has to be a gravel driveway. He doesn’t think there is anything in the permit that would preclude them from paving the portion on Lot 9.01. B. Sutherland stated he will obtain the turning radius required for the emergency vehicles from the fire department and design the turn around appropriately.

In response to a question from a Board member inquiring if a Hydrogeological report is necessary, D. Pierce responded this is an existing approved subdivision which is being amended. It was created prior to the adoption of the well ordinance.

S. McNicol stated the Environmental Commission compliments the applicant on taking this road to help preserve the wetlands. She stated she would like to encourage the removal of as few trees as possible due to the potential presence of threatened and priority species.

D. Pierce stated the Board should discuss the issues of the paving and width of the driveway. The variances the applicant is requesting is relief from the minimum frontage requirements and a variance for Lot 3.05 to issue a building permit for a lot not abutting a public street.

B. Szaferman stated the only issue the applicant would have is to find out whether he is able to pave the area of the driveway on Lot 9.01 and widen the width on the existing DEP permit. If the applicant is able to do the paving and widening without going to the DEP, he is willing to accept the condition.

R. Cacciabauda was sworn in by D. Pierce.

R. Cacciabauda stated he is willing to reinforce the road but would like to keep, to a minimum, the imperviousness and cost.

T. Decker suggested a paved apron at the intersection.

It was moved by J. Burke, seconded by S. McNicol and carried to close the public hearing. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by J. Burke, seconded by D. Haywood to approve the application with the following conditions:

1. The applicant shall review the permit issued by the Department of Environmental Protection and consult with the Board engineer to determine if the access drive can be widened to sixteen feet in width across Lot 9.01. If the applicant and the Board engineer cannot agree on whether the access drive can be widened to sixteen feet in width across Lot 9.01, the applicant shall request a written determination from the Department of Environmental Protection. In the event that the applicant and the Board engineer concur that, or the applicant receives a written determination from the Department of Environmental Protection advising that, the access drive can be widened to sixteen feet in width across Lot 9.01 the applicant shall submit revised plans showing the access drive as 16 feet in width across Lot 9.01.
2. The applicant shall make the access driveway sixteen feet wide after it leaves Lot 9.01.
3. The applicant shall install a turnout off of the access driveway at the common property line of Lots 9.01 and 3.07.
4. The applicant shall submit a Plat revised to show:
  - a. The access driveway sixteen feet wide after it leaves Lot 9.01;
  - b. A turnout off of the access driveway at the common property line of Lots 9.01 and 3.07;
  - c. A note stating that a concept grading plan and stormwater management plan must be submitted to and approved by the Board engineer prior to the issuance of a building permit for each lot;
  - d. A turnout that is teardrop shaped at the end of the driveway for Lot 3.05, sized to provide adequate space for the turnaround of fire vehicles and to be incorporated into the common driveway access and maintenance agreement; and
  - e. A paved apron for the access drive as required pursuant to Township Ordinances.
5. Recordation of the Deeds within 190 days of the date of this Memorializing Resolution.
6. Review and approval of the Deeds by the Board's professionals.
7. Revision of the Deeds to include a requirement that a concept grading plan and stormwater management plan must be submitted to and approved by the Board engineer prior to the issuance of a building permit for each lot.
8. Review and approval, by the Board's professionals, of a maintenance and access agreement for the common driveway and recordation of same with the Deeds. The turnarounds for the access driveway and the turnout on Lot 3.05 shall be included within the easement area and as a part of the maintenance and access agreement.
9. The applicant shall submit a certification from a qualified soils engineer that the design specifications for the access driveway are appropriate for heavy usage.
10. The applicant shall submit a stormwater management plan for the access driveway which shall be subject to the review and approval of the Board Engineer.
11. The variance granted for Lot 3.05 for the issuance of a building permit for a lot not abutting a public road shall apply to the construction of all permitted principle and accessory structures and other improvements the owner of Lot 3.05 may wish to construct now or in the future and which are in full compliance with the bulk requirements of the zoning ordinance at the time of construction.
12. Review and approval by the Board's professionals, and recordation, of:  
conservation easements for Lots 3.05, 3.06 and 3.07, including both a metes and bounds description and a graphical depiction of the area and noting that and subject to the right to apply to the New Jersey Department of Environmental Protection for permits to conduct activities within the area of the conservation easements.
13. All conservation easements shall be delineated in the field prior to the issuance of any building permit by the installation of markers in conformance with Kingwood Township ordinance requirements with respect to the location, type and installation of the markers.
14. Prior to the issuance of a building permit, the applicant shall submit a baseline documentation report for all conservation easements documenting with photographs the installation of the boundary markers and the condition of the easement areas;

15. No building/construction permit shall be issued for any lot unless and until a well permit has been obtained as required by Kingwood Township Ordinance Section 153-24.
16. Prior to the issuance of a certificate of occupancy, water quality testing shall be conducted on the well for each lot as required by Kingwood Township Ordinance Section 153-25 and 153-28. The test results shall be submitted to the Township's hydrogeologist for review and determination as to whether a water treatment system is necessary.
17. Receipt of unconditional approval from the Hunterdon County Planning Board.
18. Receipt of unconditional approval from the Hunterdon County Soil Conservation District.
19. Neither the Board nor its employees or professionals will perform any service in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The applicant shall be under a continuing duty to maintain a positive balance in all accounts until all conditions have been satisfied and all charges have been paid. Approved Plats or Deeds shall not be released for recordation unless all outstanding escrow fees have been paid and the applicant's escrow account contains sufficient funds to cover anticipated unbilled expenses.
20. The within approval and the use of all property subject to the within approval are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all Municipal, County, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or condition of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application.
21. The Township of Kingwood Planning Board reserves the right to revoke and withdraw any approval hereby granted in the event that there is any deviation from or alterations of the plan hereby approved, unless prior written approval for any such deviation or alteration has been obtained from the Planning Board. Minor deviations and field changes may be authorized in writing by the Township Engineer.
22. All improvements shall conform to building standards and other regulations as set forth in Federal, State, County and Municipal Statutes, Regulations, Codes and Ordinances, at the time of installation of the said improvement.
23. The acceptance by the applicant of this approval and reliance thereon by the applicant for the purpose of commencement of construction of improvements within the project in accordance with the approval, shall operate as an acknowledgment and agreement by the applicant, its successors and assigns, that it accepts the official action herewith memorialized as being subject to the terms and conditions as contained herein, and agrees to fully comply and be bound thereby.

All members present voted **AYE** on **ROLL CALL VOTE**.

*E. Niemann recused herself from her position on the Board for the following matter.*

### **Route 12 Business Park**

A. VanVeldhuisen was present for the application this evening for a determination of conditional use in the BP district.

T. Decker stated the application is not a plan for review but to determine if the use falls under the conditional uses permitted in the BP zone.

D. Pierce stated the ordinance is written that in the applicable zone for a business park, retail uses are permitted as conditional uses as long as they have a minimum frontage of 400', access from Route 12 and the Planning Board finds the use to not be a substantial detriment to the future development of the BP district and the BP district uses. It is before the Board for a determination that the proposed use is a conditional use in the BP district. If the application does not meet the conditions of the ordinance, the applicant would have to apply to the Board of Adjustment for approval.

A. VanVeldhuisen stated he would be the primary owner. The business would be called "Kidz Fun Zone". It is similar to Shield's Gymnastics. The program would be geared to 0-6 year olds. He provided a brief outline of the different classes. There is nothing like his proposed use in the Flemington area. He will be dedicating three units in total, one for the "Kidz Fun Zone" and the other two for other organizations. He is proposing to install a multi functioning facility that he would control as the owner. He would sublet some of the spaces to other organization, as well as gymnastics for younger children. There are 250 parking spaces. Most of the activity would be later in the day. His sewer plant, currently, is being operated under capacity. Most of the parking is shielded from the street. The units are fully sprinklered. They contain full scale bathroom facilities. Tracy Troutman, formerly the manager of Tumble Time, will be the manager of "Kidz Fun Zone".

D. Pierce stated the applicant would not have to return if the Board could determine the application complete and make its determination this evening.

It was moved by D. Haywood, seconded by J. Mathieu and carried to determine the application complete. All members present voted **AYE** on **ROLL CALL VOTE**.

A. VanVeldhuisen stated a lot of the trucks and vehicles will be removed within the next two to four weeks. There will be one or two minor changes. Two of the units are double with one stairwell. The other unit has one stairwell. The upper area will be for storage only and the stairs will be kept closed. The "Y" organization might be interested in subletting a portion. There are three kitchen facilities. If there were parties, the food would be brought in. No cooking facilities will be provided except possibly a microwave and coffee stations. There will be no training equipment, maybe a running class. If it were a facility like a gym, he would have to provide a locker room and the full nine yards. If he finds the facility growing, he may try to incorporate a gym in a designated building. The current proposed use is primarily for children. It will not be a teen hangout facility. Everything will be scheduled and you will be required to be a member to participate. If there were any type of recitals, they would be performed on the weekend. They have 85 parking spaces in the interior. The signage will be located in the interior not out front.

It was moved by J. Mathieu, seconded by D. Haywood and carried to determine the proposed use conforms to the conditional uses permitted in the BP zone. All members present voted **AYE** on **ROLL CALL VOTE**.

*E. Niemann resumed her position on the Board.*

#### **Gross – Block 5, Lot 4 – Ridge Road – Amendment to Site Plan approval/Proposed Agricultural Subdivision/Minor Subdivision**

J. and R. Gross were present for the application this evening. They currently own a 70 acre parcel of property. J. Gross stated, about a year ago, they appeared before the Board for a site plan, which was approved in November of 2008. They appeared before the Board because their plans were for the construction of a new house, barn and riding rink. They requested approval to have two houses on one lot. They agreed the old

farmhouse would be a farm accessory building and the new house would be the primary residence. The proposed barn contained more than 5,000 sq ft. Their approval was granted by Resolution No. 2008-19. Tonight they are requesting to amend the site plan. They have changed their priorities. They intend to construct the house first and then the barn. The proposed house will be a three bedroom dwelling. They would not be able to use the old well for the new house and barn. They are proposing to remove the line from the old well to the barn. They are not changing anything else that was previously approved. They will be going through the well drilling certification per the normal procedures. The second item is a request for a seven acre subdivision. It is a corner lot. In the previous site plan, they were required to show the property could conform to the requirement of a 7 acre subdivision in order to get approval. The lot has its own well, septic and road frontage. Each lot fully meets all the requirements independent of the other. In order to implement the subdivision, we are requesting the Board determine the application to be an agricultural (“ag”) subdivision. Agricultural subdivisions have three parameters: lots larger than 5 acres, no new roads are created and has to be for agricultural purposes. They are going to apply for farmland preservation. It is a formal application and they will need to have any future subdivisions completed prior to the process. It is better to have one slightly smaller lot with one exception area rather than having two areas on one lot. The application for the subdivision is being done to facilitate the formal application for the farm preservation process. The subdivision would change the parameters of the site plan to 62 acres. Nothing is changing from their original submission and approval except: a new well will be installed and the formalization of the lot line that had been previously approved as a tentative 7 acre subdivision. He has provided the Board with updated plats, surveys and proposed deeds.

T. Decker stated from an application stand point, there was no subdivision approved that carved off the lot. This application is for a new minor subdivision or an amendment. If the Board determines the application is a minor, tonight would be for a determination of completeness.

D. Pierce stated the application is technically a new subdivision application. It was previously approved as one lot with two dwellings.

J. Gross stated he filed two applications: one for an agricultural subdivision and one for a typical minor subdivision.

D. Pierce stated the issue the Board needs to determine is whether the proposed subdivision is a subdivision or is it an “ag” subdivision under the MLUL definition of subdivision. The MLUL provides for an exemption for an “ag” subdivision where the resulting lots are all five acres or more, no new streets are created and the purpose of the subdivision is for agricultural purposes. In this case, J. Gross has indicated the subdivision is for the purpose of preparing the remaining lands for preservation as “ag” lands. If the Board determines it is an “ag” subdivision, the Board’s involvement ends. If this is an “ag” subdivision, it will affect the amendment to the site plan. J. Gross could sell the development rights as is, creating two exception areas, one for the new house and one of the existing dwelling. The exception for the existing dwelling could be a severable area and be subdivided later. Subdividing now could make the preservation process much less complicated. The MLUL does not provide a definition of an agricultural subdivision. The deeds will not receive approval from the Board.

J. Gross stated he would like to apply for farmland preservation for the 2010 cycle, which is due in December of 2009.

It was moved by L. Senus, seconded by D. Haywood and carried that the proposed division of Block 5, Lot 4 into two lots, Lot 4 containing 7 acres and Lot 4.03 containing 62.1769 acres is deemed to constitute a division of land for agricultural purposes and is not required to obtain Planning Board approval. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by L. Senus, seconded J. Strasser that:

1. Condition number 1 of the Memorializing Resolution dated November 11, 2008 is hereby amended to read as follows:
  1. Submission of plans revised to:
    - a. Reflect the boundaries of the freshwater wetlands consistent with the boundaries as determined by the New Jersey Department of Environmental Protection;
    - b. Label the location of the septic tank and field for the existing dwelling;
    - c. Show building dimensions and the distance from the buildings to the property lines;
    - d. Show that the existing well will not be used to serve the new dwelling or proposed barn/indoor riding arena;
    - e. Include a note indicating that a new well will serve the barn/arena.
  2. The applicant shall drill a new well and satisfy all requirements of the Kingwood Township well ordinance prior to the issuance of a building permit for the barn/arena.
  3. All other condition of the memorializing resolution dated November 11, 2008 not expressly amended or revised herein shall remain in full force and effect.

All members present voted **AYE** on **ROLL CALL VOTE**.

J. Gross stated as an administrative item, they submitted various application fees and escrow amounts. It was moved by D. Haywood, seconded by J. Burke and carried to refund the application for the minor subdivision in the amount of \$900.00. All members present voted **AYE** on **ROLL CALL VOTE**.

*E. Niemann and R. Dodds recused themselves from their positions on the Board for the following matter.*

### **Hidden Orchard Estates – Block 22, Lots 15.01 and 16 – Hammar Road – Amendment to Prior Approval**

W. Wilson, attorney, was present for the application this evening. The application before the Board this evening relates to both the final major as well as the minor subdivision, which was phase one. The applicant did a minor boundary line adjustment rather than file a plat. The final plat has not been filed for the major subdivision. One of the landowners who was to receive ownership and convey the site triangle easement was in arrears on his mortgage and is facing foreclosure. He was not able to convey clear title to the site triangle. The site triangle would come into practical use if Hammar Road was substantially widened and the existing mature tree row eliminated. The site triangle is on the home side of the tree row. The applicant is requesting the elimination of the site triangle. The applicant would be willing to pursue if the owners get their issues with the mortgage company resolved. The applicant would be willing to pay for the condemnation of the site area by posting an escrow. The escrow could be posted for a period of ten years, if there was no road expansion, the escrow could revert back to Dr. Nenna. The applicant originally proposed to grant a strip of land to Block 22, Lot 15.02, but now proposes to annex that strip of land to proposed Lot 16.04. W. Wilson requested the Board grant an extension of time to perfect the minor/boundary line subdivision and for the final major subdivision.

W. Wilson stated the applicant would have no problem revisiting the issue of the site triangle easement if the issue is resolved prior to the filing of the plat. The approval would allow the applicant to complete the transactions for the boundary line adjustment. It would allow the applicant to perfect the land swap with Lot 15.01.

D. Pierce stated it is his opinion the suggestion of putting money into an escrow to fund a condemnation by the Township is not appropriate. The Township should not have condemnation proceedings to complete someone's private development.

A. Clerico stated in reviewing the prior resolutions, dated October 9, 2007 for the major and December of 2008 for the boundary line adjustment, the applicant is not eligible for an extension under the Permit Extension Act of 2008. The tract is in State Planning Area 4-B and does not fall under the Permit Extension Act of 2008. The MLUL, Section 52, refers to the effect of final approval on site plan and major subdivision approval. The zoning requirements to the preliminary approval should not be changed for two years. The Planning Board has the option to extend the application for one year but not to exceed three. In the case of a subdivision or site plan of 50 acres or more, the Board has the right to grant longer than two years. The purpose of the above comments is to advise the Board of their options.

It was moved by S. McNicol, seconded by J. Strasser and carried that:

1. The time to record the deeds perfecting the boundary line approval is hereby extended for a period of 190 days.
2. All other condition of Memorializing Resolution 2008-25, dated December 9, 2008 not expressly amended or revised herein shall remain in full force and effect.

All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by S. McNicol, seconded by D. Haywood and carried that:

1. The applicant is granted a temporary waiver of the requirement to obtain a sight triangle easement across Block 22, Lot 15.02. The applicant shall continue to attempt to secure the sight triangle easement across Block 22, Lot 15.02 and shall reappear before the Board prior to the bonding of public improvements and prior to the perfection of the major subdivision approval to present, and obtain approval of, a plan to address the future need for the sight triangle easement on Block 22, Lot 15.02.
2. The strip of land originally to be transferred to and made a part of Block 22, Lot 15.02 shall be made a part of proposed Lot 16.04.
3. The preliminary and final major subdivision approval is hereby extended for a period of one year or until October 9, 2010. This extension of such approval is made without prejudice to the applicant's rights, if any, to an extension pursuant to the provisions of the Permit Extension Act.
4. All other conditions of Memorializing Resolution 2007-28, dated October 9, 2007 not expressly amended or revised herein shall remain in full force and effect.

*E. Niemann and R. Dodds resumed their seats on the Board at this time.*

## **2009 Budget Report**

A budget report for the Board's other expenses was provided by the Chief Financial Officer. It indicates an amount of \$4,938.13 has been encumbered out of the budgeted \$15,000.00 amount.

T. Decker and A. Clerico were requested to leave at 10:31 PM. A. Clerico responded she will be staying on her own time.

### **Solar Panels/Wind Generating Turbine – Sample Ordinances**

After a brief discussion, the Environmental Commission would be providing suggestions to the Board.

### **Reserve Septic Testing**

After a brief discussion, it was moved by D. Haywood, seconded by S. McNicol and carried to make a recommendation to the Board of Health they consider adopting a reserve septic requirement for new lots. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Pre-review Subcommittee**

After a brief discussion, the Board was not in favor of appointing a pre-review subcommittee.

### **Draft Ordinance No. 15-06-2009 – To Revise and Reenact Chapter 86, Junkyards and To Amend Chapter 127, Vehicles, Inoperable and Chapter 132, Zoning**

It was moved by S. McNicol, seconded by D. Haywood and carried to recommend adoption of **Ordinance No. 15-06-2009 – To Revise and Reenact Chapter 86, Junkyards and To Amend Chapter 127, Vehicles, Inoperable and Chapter 132, Zoning** to the Township Committee. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Board of Adjustment Recommendations**

D. Pierce stated the Board of Adjustment is required each year to make a report to the Township Committee on the variances it has acted upon and any changes to the zoning ordinance which might be required. The Board of Adjustment wanted to make a recommendation that the zoning ordinance be amended for the setback requirements for the construction of ramps to permit access for persons who are disabled.

It was moved by D. Haywood, seconded by L. Senus to change the zoning ordinance to amend the setback requirements for the construction of ramps to permit access for persons who are disabled. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Approval of May 12, 2009 Minutes**

It was moved by J. Burke, seconded by J. Mathieu and carried to approve the minutes of May 12, 2009 and place on file with the following correction:

*Page 13, section A – “land” should be corrected to reflect “lane”.*

All members present voted **AYE** on **ROLL CALL VOTE**, except L. Senus, who abstained.

### **APPLICATION STATUS**

**CORRESPONDENCE**

Correspondence was reviewed as per the agenda.

**PRIVILEGE OF THE FLOOR**

A. Belle inquired if Ordinance No. 15-6-2009 indicates that the definition of inoperable vehicles also pertains to types of machinery. E. Niemann responded vehicles are carefully defined.

The Board discussed the appropriate process and procedures to report a violation of the zoning ordinance. The response was a complaint should be made to the General Code Enforcement Official, W. Sidote. J. Burke responded the General Code Enforcement Official is working on some issues in the Township.

**ADJOURNMENT**

It was moved by J. Burke, seconded by D. Haywood and carried to adjourn the meeting at 11:40 PM. All members voted **AYE**.

**Respectfully submitted,**

*s/ Diane Laudenschick*

**Diane Laudenschick, Secretary**